

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

REGULATORY AUTHORITY

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IN RE:)
AUDIT OF GASCO DISTRIBUTION SYSTEMS) DOCKET NO. 00-00998
DEFERRED GAS COST ACCOUNT FOR THE) EXECUTIVE SECRETARY
PERIOD OF JULY 1, 1999 THROUGH JUNE 30,)
2000)

STAFF REPLY TO *RESPONSE OF GASCO TO SHOW CAUSE ORDER*

On April 5, 2001, the Energy and Water Division ("Staff") of the Tennessee Regulatory Authority ("Authority" or "TRA") filed the Actual Cost Adjustment ("ACA") Compliance Audit Report of Gasco Distribution Systems, Inc. ("Gasco") with the TRA. The Directors considered this report at the regularly scheduled Authority Conference on April 17, 2001, and they unanimously accepted and approved the ACA audit report and the findings contained therein. Certain of these audit findings appear to be a consequence of what one Director described in essence as "terrible management".¹ As a result of the ensuing discussion, the Directors unanimously voted to issue a show cause order pursuant to Tenn. Code Ann. § 65-2-106, and appointed Director Melvin Malone to hear the merits of this case.² The show cause order was issued on May 14, 2001.

¹ Transcript of April 17, 2001 Authority Conference, p. 24.

² Director Malone was also given the option of hearing this case in conjunction with Docket Nos. 97-00160 and 97-00293, *Show Cause Proceeding Against Gasco*, which had been recently revived due to alleged violations of certain Authority rules pertaining to filing requirements. Although the May 25, 2001 *Response of Gasco to Show Cause Order* ("Response") was filed under the afore-mentioned docket numbers, the instant proceeding is a separate Show Cause relative to the ACA Audit. While possibly having certain macro-issues in common with the earlier dockets, at this time this proceeding should be designated only as Docket No. 00-00998.

Pursuant to the May 16, 2001 *Notice of Filings and Hearing* issued by the Hearing Officer, Staff files this Reply to Gasco's Response, which essentially raises two issues:

Issue # 1: Gasco maintains that the Final Order in Docket No. 99-00647 does not specifically direct Gasco to take any action as a result of the attached audit report.

The Order does direct Gasco to take action in connection with its Actual Cost Adjustment (ACA) recovery mechanism, in as much as it references the underlying audit report. The Order clearly states that the Director's agree with the findings of the audit, they approve the report and accept the Staff recommendations contained therein. While the Order does not direct Gasco to perform specific accounting tasks, it does approve the Staff audit findings and directs Gasco to comply with them.

Like all gas companies, Gasco is audited every year by this Authority in connection with its Purchased Gas Adjustment, as required by TRA Rule 1220-4-7. Gasco has had several audits performed on its Deferred Gas Cost Account, and every time Gasco has agreed with the revised rate that the Staff has calculated, as well as with the time period that the new rate was to be implemented. It is disingenuous to now complain that the Final Order does not direct Gasco to perform certain financial transactions, and it is an argument without merit given Gasco's past behavior in connection with prior ACA audits.

Issue # 2: Gasco maintains that the ACA Audit Report compiled in connection with Docket No. 99-00647 does not direct Gasco to take or refrain from taking any action.

The summary section of the report reads as follows: "Based on the Findings noted, the balance in the refund due customers account as of June 30, 1999 should be a negative \$26,427.23. The correct ACA adjustment factor to be applied to customer bills, beginning with

the November 30, 1999 billing, is a negative \$0.5915....” This statement clearly directs Gasco to use the amounts specified, starting at the time specified. Standing alone, the audit report may not have the full force and effect of an Order by this Authority. But once the Authority adopts the findings as their own, as they did in this case, the above statement made in the ACA Audit Report **becomes a required action for Gasco to take.** Failure to perform such action is a violation of the Final Order that approved, adopted and incorporated such audit report.

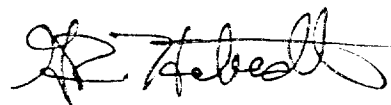
To summarize Staff’s position relative to what Gasco has been legally directed to do as well as the relative seriousness of the ACA Audit and Gasco’s lack of compliance:

1. Recommendations made in an audit report are directives that Gasco is obligated to address and take the appropriate corrective action. The Authority’s Final Order approving the report, its findings and its recommendations makes that point clear.
2. The intention of the PGA Rule is to permit Gasco to recover its gas costs in a timely manner. In order for that to happen, costs must match recoveries as closely as possible. The advice and recommendations of Staff are meant to aid smaller companies in achieving that goal. As pointed out in Section VIII, page 9 of the current report, smaller companies do not have the staff or expertise to calculate and implement adjustment factors on their own. The Staff determines the amount and effective date of the ACA adjustment. The language of the report is to inform what the factor is and when it is to be implemented. Gasco is aware of the import of this language, as this is its fifth such audit.
3. If small companies are allowed to implement adjustments on their own schedule, the balances could easily and quickly grow to significant amounts. This would impair a company’s ability to refund, or in the case of a surcharge, place a hardship on the consumer. As of June 30, 2000, Gasco owed its customers more than \$24,000.

4. Staff reviews the recommendations from the previous audit during an ACA audit to see if recommendations have been acted upon. Not implementing the approved ACA adjustment during the period is an automatic finding. Staff's conclusion that Gasco failed to comply with the intent of the PGA Rule stemmed from the repetitive nature of the findings. Issues that have been duly noted and do not repeat during the subsequent year are not mentioned in the report.
5. Failing to implement a refund adjustment during the entire audit period is a serious deficiency. Notwithstanding Gasco's comment that it is currently in an under-recovered position, Staff cannot take the approach that it all "evens out". The PGA filing Gasco made in October addressed its increased gas costs, which is the function of the PGA filings. Gasco filed for a second increase in January 2001. Staff notes that the Company has not filed a PGA to decrease their PGA factor, even though gas costs have significantly decreased in recent months. Other gas companies have filed several PGAs to reduce their PGA factors since January. The indication is that Gasco has no intention of filing for a reduction any time soon. At this time, Staff cannot predict what Gasco's position is, and it will not become clear until the next audit.

It is for these reasons that Staff requests that the Hearing Officer deny Gasco's request to dismiss and allow this Show Cause Proceeding against Gasco Distribution Systems, Inc. proceed to hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. R. Hotvedt", written over a horizontal line.

Gary R. Hotvedt, Counsel for TRA Staff

CERTIFICATE OF SERVICE

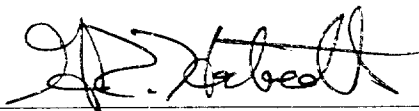
I hereby certify that a true and exact copy of the foregoing has been served on the following person(s), via the method(s) checked, on June 1, 2001:

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